

In the Court of Appeals of the State of Alaska

Elisey Martusheff,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-12806**

Order

Request for Review of Clerk’s Intention
to Enter Judgment for Costs of
Appointed Attorney

Date of Order: **May 26, 2020**

Trial Court Case No. **3PA-16-00916CR**

The Appellant, Elisey E. Martusheff, appealed his felony convictions to this Court. In *Martusheff v. State*, Summary Disposition No. 0104 (February 5, 2020), this Court affirmed Mr. Martusheff’s convictions.

Mr. Martusheff was represented by counsel at public expense in this appeal. Under Alaska Appellate Rule 209(b)(5), at the conclusion of any appellate case in which a criminal defendant is represented by court-appointed counsel, the Clerk of the Appellate Courts is directed to “enter judgment against the defendant for the cost of appointed appellate counsel unless the defendant’s conviction was reversed by the appellate court.” Because Mr. Martusheff was represented by court-appointed counsel in this appeal, because Mr. Martusheff’s appeal was a felony merit appeal — and because Mr. Martusheff’s convictions were not reversed — the Office of the Clerk of the Appellate Courts notified Mr. Martusheff that it intends to enter judgment against him in the amount of \$1,500.00 for the cost of counsel. *See* Alaska Appellate Rule 209(b)(6).

Mr. Martusheff now seeks judicial review of the Appellate Clerk’s decision. *See* Alaska Appellate Rule 503(h)(2)(A). In his request for judicial review of the Clerk’s Notice of Intent, Mr. Martusheff asserts that he is disabled and that, because he will

undergo surgery later this month, he cannot now afford to pay the \$1,500.00 judgment for the cost of appointed counsel.

But because Appellate Rule 209(b)(5) and (6) require criminal defendants whose convictions are not reversed on appeal to reimburse to the government a portion of the cost of the attorneys who represent them at public expense, and because this Court did not reverse Mr. Martusheff's convictions in this appeal, he is required to reimburse to the government a portion of the cost of the attorney who represented him at public expense. While the Court recognizes that an appellant may obtain relief from a judgment upon a showing of financial hardship, Mr. Martusheff has not made such a showing.

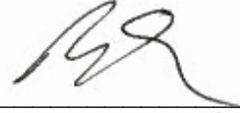
It also appears, based on Mr. Martusheff's Request for Review, that he believes the Clerk's proposed judgment is for the cost of counsel in Mr. Martusheff's recent petition for hearing in the Alaska Supreme Court. While it is true that a petition for hearing was filed in this case — and was denied in Supreme Court Order dated 5/18/2020 — the Clerk's proposed judgment for the cost of counsel was not assessed for that petition, but for the merit appeal in this case.

The decision of the Appellate Court Clerk to enter a **\$1,500.00** judgment against Mr. Martusheff for the cost of counsel under Appellate Rule 209(b) is **AFFIRMED**.

Entered at the direction of Chief Judge Allard.

Martusheff v. State - p. 3
File No. A-12806
May 26, 2020

Clerk of the Appellate Courts



Ryan Montgomery-Sythe,
Chief Deputy Clerk

cc: Elisey E. Martusheff at 1430 Gambell St. #105, Anchorage, AK 99501

Distribution:

Email:
Horowitz, Michael
Beach, Ruthanne